

magnet to impose a magnetic influence on said stirrer in said respective sample vessel to move said stirrer in said respective sample vessel.

10. (Original) A system as claimed in claim 1, wherein:  
said sample vessel holder is adapted to maintain said sample vessel at said angle which is within the range of about 15 degrees to about 25 degrees with respect to the horizontal.

11. – 18. (Cancelled)

### **REMARKS**

Claims 1-10 are in the present application.

Applicants have amended Claim 1 in order to further clarify the subject matter of the present invention. This amendment is fully supported in the present Specification, specifically in Figures 5 and 9. These figures show a sample bottle tilted towards the horizontal axis and away from the vertical by significant degrees, and two magnets rotating on each side of the bottle.

The main Claim 1 as amended is directed to a system for stirring a solid suspended in a liquid in a sample vessel, said system comprising: a sample vessel; a sample vessel holder, adapted to receive at least one said sample vessel and maintain said sample vessel in a position such that the longitudinal axis of said sample vessel extends at an angle substantially less than 90 degrees with respect to the horizontal; a stirrer within said sample vessel; and a magnet driver, adapted to move a magnet proximate to an outer surface of said sample vessel to permit said magnet to impose a magnetic influence on said stirrer to move said stirrer in said sample vessel, and wherein said magnet rotates about an axis 90 degrees with respect to the longitudinal axis of said sample vessel.

Claims 1 and 6-10 have been rejected under 35 U.S.C. §102 (b) as being allegedly anticipated by Ilg. Claims 1–10 have been rejected under 35 U.S.C. §102 (b) as being allegedly anticipated by Karkos, Jr. et al. Claims 1 and 5-10 have been

rejected under 35 USC § 102(b) as allegedly anticipated by Ullman. The cited references do not teach or anticipate the claimed invention as amended.

Ilg discloses a magnet that rotates about a vertical axis with respect to the longitudinal axis of a sample vessel (see Fig. 1). This results in the stirrer rotating in a circular motion by Ilg. By rotating about a horizontal axis in the present invention, there is, in fact, imparted a tumbling motion, rather than a circular motion, on the stirrer. Thus, the resulting stirring motion *inside the sample vessel* of the present invention is distinct from the disclosure of Ilg, because the motion and placement of the magnet in the present invention is different from the disclosure of Ilg. Ilg clearly teaches that the vessel therein is positioned at an angle of 90 degrees to the horizontal (i.e., absolutely vertical). Applicants hold the vessel of the present invention at an angle substantially less than 90 degrees with respect to the horizontal. This makes it totally different from Ilg.

Karkos, Jr. et al. also teach rotation about a vertical axis with respect to a sample vessel (see Fig. 2,3,4). In Karkos, Jr. et al., the stirrer rotates with the circular motion, which is distinctly different from the present invention. If one were to hold the vessel substantially less than 90 degrees from the horizontal, one can then describe the positioning of the stirring system with respect to the longitudinal axis of the vessel, which "runs down" the long dimension of the vessel.

Ullmann discloses a stirrer that moves from a rest position about a horizontal axis to a second position and then back to the rest position (see col. 2, lines 29-39), and that the movement is intermittent (see col. 2, lines 44-45). The stirrer in the present invention does not move in this manner (it tumbles in an essentially irregular fashion), which is due to the rotation and placement of the magnet(s) that drive(s) the rotation.

Although the claims have been rejected as anticipated under 35 U.S.C. § 102 on the disclosure of each of Karkos, Jr. et al. and Ullman, it is axiomatic that anticipation under Section 102 requires that the prior art reference disclose every element of the claim. In re King, 801 F.2d 1324, 1326, 231 U.S.P.Q. 136, 138 (Fed. Cir. 1986). Thus there must be no differences between the subject matter of the claim and the disclosure of the prior art reference. Stated in another way, the reference

must contain within its four corners adequate directions to practice the invention. The corollary of this rule is equally applicable. The absence from the reference of any claimed element negates anticipation. Kloster Speedsteel AB v. Crucible Inc., 793 F.2d 1565, 1571, 230 U.S.P.Q. 81, 84 (Fed. Cir. 1986).

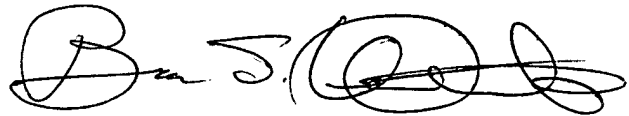
Here it is clear that Claim 1 as amended and the rejected claims dependent thereon distinctly differ from each of Ilg, Karkos, Jr. et al. and Ullman. Clearly, Kloster Speedsteel shows that Ilg, Karkos, Jr. et al. and Ullman fall short of the statutory standard of 35 U.S.C. Section 102. Claims 1-10 are not anticipated by Ilg, Karkos, Jr. et al. and Ullman. Withdrawal of the instant rejection under Section 102 is therefore respectfully requested.

Claims 1-3 and 5-10 have been rejected under 35 U.S.C. § 103(a) as allegedly rendered unpatentable by Ilg in view of Rosinger.

It would not have been obvious to one of ordinary skill in the art to take Ilg in view of Rosinger and obtain the claimed invention as amended, since the design taught in Ilg makes that impossible. Ilg has a magnet below the sample vessel. The shape of Ilg's sample vessel, and the holder of the sample vessel prevent the type of placement shown in the present invention. Rosinger also teaches a magnet (and motor) rotating in a plane that is different from what is described in the present invention. Neither of these cited references, alone or together, would lead one of ordinary skill to achieve the present invention. Withdrawal of the instant rejection under Section 103 is therefore respectfully requested.

Thus, in view of the present Amendment and Remarks, the claims of the present application are believed to be in condition for allowance. Early notice thereof is respectfully requested by Applicants.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "B. S. Weintraub", with a large, stylized circular flourish at the end.

Bruce S. Weintraub  
Attorney for Applicants  
Registration No. 34,277

Becton Dickinson and Company  
1 Becton Drive  
Franklin Lakes, New Jersey 07417  
(201) 847-7096

#71336